

AMENDED IN SENATE JUNE 23, 2015

AMENDED IN ASSEMBLY APRIL 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 1104**

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**Introduced by Assembly Member Rodriguez  
(Principal coauthor: Assembly Member Irwin)**

February 27, 2015

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An act to amend Section 1524 of the Penal Code, relating to search warrants.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1104, as amended, Rodriguez. Search warrants.

Existing law provides that a search warrant may only be issued upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. Existing law also states the grounds upon which a search warrant may be issued, including, among other grounds, when the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony, or when there is a warrant to arrest a person.

Existing law authorizes the seizure of a controlled substance and any device, contrivance, instrument, or paraphanelia used for unlawfully using or administering a controlled substance.

This bill would authorize the issuance of a search warrant when the property or things to be seized are controlled substances or any device, contrivance, instrument, or paraphanelia used for unlawfully using or administering a controlled substance.

*This bill would incorporate changes to Section 1524 of the Penal Code proposed by both this bill and AB 539, which would become operative only if both bills are enacted and become effective on or before January 1, 2016, and this bill is chaptered last.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1524 of the Penal Code, ~~as amended by~~  
2 ~~Section 1 of Chapter 872 of the Statutes of 2014,~~ is amended to  
3 read:

4 1524. (a) A search warrant may be issued upon any of the  
5 following grounds:

6 (1) When the property was stolen or embezzled.

7 (2) When the property or things were used as the means of  
8 committing a felony.

9 (3) When the property or things are in the possession of any  
10 person with the intent to use them as a means of committing a  
11 public offense, or in the possession of another to whom he or she  
12 may have delivered them for the purpose of concealing them or  
13 preventing them from being discovered.

14 (4) When the property or things to be seized consist of an item  
15 or constitute evidence that tends to show a felony has been  
16 committed, or tends to show that a particular person has committed  
17 a felony.

18 (5) When the property or things to be seized consist of evidence  
19 that tends to show that sexual exploitation of a child, in violation  
20 of Section 311.3, or possession of matter depicting sexual conduct  
21 of a person under 18 years of age, in violation of Section 311.11,  
22 has occurred or is occurring.

23 (6) When there is a warrant to arrest a person.

24 (7) When a provider of electronic communication service or  
25 remote computing service has records or evidence, as specified in  
26 Section 1524.3, showing that property was stolen or embezzled  
27 constituting a misdemeanor, or that property or things are in the  
28 possession of any person with the intent to use them as a means  
29 of committing a misdemeanor public offense, or in the possession  
30 of another to whom he or she may have delivered them for the  
31 purpose of concealing them or preventing their discovery.

1 (8) When the property or things to be seized include an item or  
2 evidence that tends to show a violation of Section 3700.5 of the  
3 Labor Code, or tends to show that a particular person has violated  
4 Section 3700.5 of the Labor Code.

5 (9) When the property or things to be seized include a firearm  
6 or other deadly weapon at the scene of, or at the premises occupied  
7 or under the control of the person arrested in connection with, a  
8 domestic violence incident involving a threat to human life or a  
9 physical assault as provided in Section 18250. This section does  
10 not affect warrantless seizures otherwise authorized by Section  
11 18250.

12 (10) When the property or things to be seized include a firearm  
13 or other deadly weapon that is owned by, or in the possession of,  
14 or in the custody or control of, a person described in subdivision  
15 (a) of Section 8102 of the Welfare and Institutions Code.

16 (11) When the property or things to be seized include a firearm  
17 that is owned by, or in the possession of, or in the custody or  
18 control of, a person who is subject to the prohibitions regarding  
19 firearms pursuant to Section 6389 of the Family Code, if a  
20 prohibited firearm is possessed, owned, in the custody of, or  
21 controlled by a person against whom a protective order has been  
22 issued pursuant to Section 6218 of the Family Code, the person  
23 has been lawfully served with that order, and the person has failed  
24 to relinquish the firearm as required by law.

25 (12) When the information to be received from the use of a  
26 tracking device constitutes evidence that tends to show that either  
27 a felony, a misdemeanor violation of the Fish and Game Code, or  
28 a misdemeanor violation of the Public Resources Code has been  
29 committed or is being committed, tends to show that a particular  
30 person has committed a felony, a misdemeanor violation of the  
31 Fish and Game Code, or a misdemeanor violation of the Public  
32 Resources Code, or is committing a felony, a misdemeanor  
33 violation of the Fish and Game Code, or a misdemeanor violation  
34 of the Public Resources Code, or will assist in locating an  
35 individual who has committed or is committing a felony, a  
36 misdemeanor violation of the Fish and Game Code, or a  
37 misdemeanor violation of the Public Resources Code. A tracking  
38 device search warrant issued pursuant to this paragraph shall be  
39 executed in a manner meeting the requirements specified in  
40 subdivision (b) of Section 1534.

1 (13) When a sample of the blood of a person constitutes  
2 evidence that tends to show a violation of Section 23140, 23152,  
3 or 23153 of the Vehicle Code and the person from whom the  
4 sample is being sought has refused an officer's request to submit  
5 to, or has failed to complete, a blood test as required by Section  
6 23612 of the Vehicle Code, and the sample will be drawn from  
7 the person in a reasonable, medically approved manner. This  
8 paragraph is not intended to abrogate a court's mandate to  
9 determine the propriety of the issuance of a search warrant on a  
10 case-by-case basis.

11 (14) Beginning January 1, 2016, the property or things to be  
12 seized are firearms or ammunition or both that are owned by, in  
13 the possession of, or in the custody or control of a person who is  
14 the subject of a gun violence restraining order that has been issued  
15 pursuant to Division 3.2 (commencing with Section 18100) of  
16 Title 2 of Part 6, if a prohibited firearm or ammunition or both is  
17 possessed, owned, in the custody of, or controlled by a person  
18 against whom a gun violence restraining order has been issued,  
19 the person has been lawfully served with that order, and the person  
20 has failed to relinquish the firearm as required by law.

21 (15) When the property or things to be seized are controlled  
22 substances or ~~any~~ a device, contrivance, instrument, or paraphanelia  
23 used for unlawfully using or administering a controlled substance  
24 pursuant to the authority described in Section 11472 of the Health  
25 and Safety Code.

26 (b) The property, things, person, or persons described in  
27 subdivision (a) may be taken on the warrant from any place, or  
28 from any person in whose possession the property or things may  
29 be.

30 (c) Notwithstanding subdivision (a) or (b), no search warrant  
31 shall issue for any documentary evidence in the possession or  
32 under the control of any person who is a lawyer as defined in  
33 Section 950 of the Evidence Code, a physician as defined in Section  
34 990 of the Evidence Code, a psychotherapist as defined in Section  
35 1010 of the Evidence Code, or a member of the clergy as defined  
36 in Section 1030 of the Evidence Code, and who is not reasonably  
37 suspected of engaging or having engaged in criminal activity  
38 related to the documentary evidence for which a warrant is  
39 requested unless the following procedure has been complied with:

1 (1) At the time of the issuance of the warrant, the court shall  
2 appoint a special master in accordance with subdivision (d) to  
3 accompany the person who will serve the warrant. Upon service  
4 of the warrant, the special master shall inform the party served of  
5 the specific items being sought and that the party shall have the  
6 opportunity to provide the items requested. If the party, in the  
7 judgment of the special master, fails to provide the items requested,  
8 the special master shall conduct a search for the items in the areas  
9 indicated in the search warrant.

10 (2) (A) If the party who has been served states that an item or  
11 items should not be disclosed, they shall be sealed by the special  
12 master and taken to court for a hearing.

13 (B) At the hearing, the party searched shall be entitled to raise  
14 any issues that may be raised pursuant to Section 1538.5 as well  
15 as a claim that the item or items are privileged, as provided by  
16 law. The hearing shall be held in the superior court. The court shall  
17 provide sufficient time for the parties to obtain counsel and make  
18 motions or present evidence. The hearing shall be held within three  
19 days of the service of the warrant unless the court makes a finding  
20 that the expedited hearing is impracticable. In that case, the matter  
21 shall be heard at the earliest possible time.

22 (C) If an item or items are taken to court for a hearing, any  
23 limitations of time prescribed in Chapter 2 (commencing with  
24 Section 799) of Title 3 of Part 2 shall be tolled from the time of  
25 the seizure until the final conclusion of the hearing, including any  
26 associated writ or appellate proceedings.

27 (3) The warrant shall, whenever practicable, be served during  
28 normal business hours. In addition, the warrant shall be served  
29 upon a party who appears to have possession or control of the  
30 items sought. If, after reasonable efforts, the party serving the  
31 warrant is unable to locate the person, the special master shall seal  
32 and return to the court, for determination by the court, any item  
33 that appears to be privileged as provided by law.

34 (d) (1) As used in this section, a “special master” is an attorney  
35 who is a member in good standing of the California State Bar and  
36 who has been selected from a list of qualified attorneys that is  
37 maintained by the State Bar particularly for the purposes of  
38 conducting the searches described in this section. These attorneys  
39 shall serve without compensation. A special master shall be  
40 considered a public employee, and the governmental entity that

1 caused the search warrant to be issued shall be considered the  
2 employer of the special master and the applicable public entity,  
3 for purposes of Division 3.6 (commencing with Section 810) of  
4 Title 1 of the Government Code, relating to claims and actions  
5 against public entities and public employees. In selecting the  
6 special master, the court shall make every reasonable effort to  
7 ensure that the person selected has no relationship with any of the  
8 parties involved in the pending matter. Information obtained by  
9 the special master shall be confidential and may not be divulged  
10 except in direct response to inquiry by the court.

11 (2) In any case in which the magistrate determines that, after  
12 reasonable efforts have been made to obtain a special master, a  
13 special master is not available and would not be available within  
14 a reasonable period of time, the magistrate may direct the party  
15 seeking the order to conduct the search in the manner described  
16 in this section in lieu of the special master.

17 (e) Any search conducted pursuant to this section by a special  
18 master may be conducted in a manner that permits the party serving  
19 the warrant or his or her designee to accompany the special master  
20 as he or she conducts his or her search. However, that party or his  
21 or her designee may not participate in the search nor shall he or  
22 she examine any of the items being searched by the special master  
23 except upon agreement of the party upon whom the warrant has  
24 been served.

25 (f) As used in this section, “documentary evidence” includes,  
26 but is not limited to, writings, documents, blueprints, drawings,  
27 photographs, computer printouts, microfilms, X-rays, files,  
28 diagrams, ledgers, books, tapes, audio and video recordings, films,  
29 and papers of any type or description.

30 (g) No warrant shall issue for any item or items described in  
31 Section 1070 of the Evidence Code.

32 (h) Notwithstanding any other law, no claim of attorney work  
33 product as described in Chapter 4 (commencing with Section  
34 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall  
35 be sustained where there is probable cause to believe that the  
36 lawyer is engaging or has engaged in criminal activity related to  
37 the documentary evidence for which a warrant is requested unless  
38 it is established at the hearing with respect to the documentary  
39 evidence seized under the warrant that the services of the lawyer

1 were not sought or obtained to enable or aid anyone to commit or  
2 plan to commit a crime or a fraud.

3 (i) Nothing in this section is intended to limit an attorney's  
4 ability to request an in-camera hearing pursuant to the holding of  
5 the Supreme Court of California in *People v. Superior Court (Laff)*  
6 (2001) 25 Cal.4th 703.

7 (j) In addition to any other circumstance permitting a magistrate  
8 to issue a warrant for a person or property in another county, when  
9 the property or things to be seized consist of any item or constitute  
10 evidence that tends to show a violation of Section 530.5, the  
11 magistrate may issue a warrant to search a person or property  
12 located in another county if the person whose identifying  
13 information was taken or used resides in the same county as the  
14 issuing court.

15 (k) This section shall not be construed to create a cause of action  
16 against any foreign or California corporation, its officers,  
17 employees, agents, or other specified persons for providing location  
18 information.

19 *SEC. 1.5. Section 1524 of the Penal Code is amended to read:*  
20 1524. (a) A search warrant may be issued upon any of the  
21 following grounds:

22 (1) When the property was stolen or embezzled.

23 (2) When the property or things were used as the means of  
24 committing a felony.

25 (3) When the property or things are in the possession of any  
26 person with the intent to use them as a means of committing a  
27 public offense, or in the possession of another to whom he or she  
28 may have delivered them for the purpose of concealing them or  
29 preventing them from being discovered.

30 (4) When the property or things to be seized consist of ~~any~~ *an*  
31 item or constitute ~~any~~ evidence that tends to show a felony has  
32 been committed, or tends to show that a particular person has  
33 committed a felony.

34 (5) When the property or things to be seized consist of evidence  
35 that tends to show that sexual exploitation of a child, in violation  
36 of Section 311.3, or possession of matter depicting sexual conduct  
37 of a person under 18 years of age, in violation of Section 311.11,  
38 has occurred or is occurring.

39 (6) When there is a warrant to arrest a person.

(7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

(8) When the property or things to be seized include an item or ~~any~~ evidence that tends to show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person has violated Section 3700.5 of the Labor Code.

(9) When the property or things to be seized include a firearm or ~~any~~ other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault as provided in Section 18250. This section does not affect warrantless seizures otherwise authorized by Section 18250.

(10) When the property or things to be seized include a firearm or ~~any~~ other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.

(11) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 6389 of the Family Code, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a protective order has been issued pursuant to Section 6218 of the Family Code, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

(12) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code has been committed or is being committed, tends to show that a particular person has committed a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or is committing a felony, a misdemeanor



violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or will assist in locating an individual who has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code. A tracking device search warrant issued pursuant to this paragraph shall be executed in a manner meeting the requirements specified in subdivision (b) of Section 1534.

(13) When a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code, and the sample will be drawn from the person in a reasonable, medically approved manner. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(14) Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order that has been issued pursuant to Division 3.2 (commencing with Section 18100) of Title 2 of Part 6, if a prohibited firearm or ammunition or both is possessed, owned, in the custody of, or controlled by a person against whom a gun violence restraining order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

*(15) When the property or things to be seized are controlled substances or a device, contrivance, instrument, or paraphanelia used for unlawfully using or administering a controlled substance pursuant to the authority described in Section 11472 of the Health and Safety Code.*

*(16) (A) When all of the following apply:*

*(i) A sample of the blood of a person constitutes evidence that tends to show a violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code.*

*(ii) The person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete,*

1 *a blood test as required by Section 655.1 of the Harbors and*  
2 *Navigation Code.*

3 *(iii) The sample will be drawn from the person in a reasonable,*  
4 *medically approved manner.*

5 *(B) This paragraph is not intended to abrogate a court's*  
6 *mandate to determine the propriety of the issuance of a search*  
7 *warrant on a case-by-case basis.*

8 (b) The property, things, person, or persons described in  
9 subdivision (a) may be taken on the warrant from any place, or  
10 from any person in whose possession the property or things may  
11 be.

12 (c) Notwithstanding subdivision (a) or (b), no search warrant  
13 shall issue for any documentary evidence in the possession or  
14 under the control of any person who is a lawyer as defined in  
15 Section 950 of the Evidence Code, a physician as defined in Section  
16 990 of the Evidence Code, a psychotherapist as defined in Section  
17 1010 of the Evidence Code, or a member of the clergy as defined  
18 in Section 1030 of the Evidence Code, and who is not reasonably  
19 suspected of engaging or having engaged in criminal activity  
20 related to the documentary evidence for which a warrant is  
21 requested unless the following procedure has been complied with:

22 (1) At the time of the issuance of the warrant, the court shall  
23 appoint a special master in accordance with subdivision (d) to  
24 accompany the person who will serve the warrant. Upon service  
25 of the warrant, the special master shall inform the party served of  
26 the specific items being sought and that the party shall have the  
27 opportunity to provide the items requested. If the party, in the  
28 judgment of the special master, fails to provide the items requested,  
29 the special master shall conduct a search for the items in the areas  
30 indicated in the search warrant.

31 (2) (A) If the party who has been served states that an item or  
32 items should not be disclosed, they shall be sealed by the special  
33 master and taken to court for a hearing.

34 (B) At the hearing, the party searched shall be entitled to raise  
35 any issues that may be raised pursuant to Section 1538.5 as well  
36 as a claim that the item or items are privileged, as provided by  
37 law. The hearing shall be held in the superior court. The court shall  
38 provide sufficient time for the parties to obtain counsel and make  
39 ~~any~~ motions or present ~~any~~ evidence. The hearing shall be held  
40 within three days of the service of the warrant unless the court

1 makes a finding that the expedited hearing is impracticable. In that  
2 ~~case~~ *case*, the matter shall be heard at the earliest possible time.

3 (C) If an item or items are taken to court for a hearing, any  
4 limitations of time prescribed in Chapter 2 (commencing with  
5 Section 799) of Title 3 of Part 2 shall be tolled from the time of  
6 the seizure until the final conclusion of the hearing, including any  
7 associated writ or appellate proceedings.

8 (3) The warrant shall, whenever practicable, be served during  
9 normal business hours. In addition, the warrant shall be served  
10 upon a party who appears to have possession or control of the  
11 items sought. If, after reasonable efforts, the party serving the  
12 warrant is unable to locate the person, the special master shall seal  
13 and return to the court, for determination by the court, any item  
14 that appears to be privileged as provided by law.

15 (d) (1) As used in this section, a “special master” is an attorney  
16 who is a member in good standing of the California State Bar and  
17 who has been selected from a list of qualified attorneys that is  
18 maintained by the State Bar particularly for the purposes of  
19 conducting the searches described in this section. These attorneys  
20 shall serve without compensation. A special master shall be  
21 considered a public employee, and the governmental entity that  
22 caused the search warrant to be issued shall be considered the  
23 employer of the special master and the applicable public entity,  
24 for purposes of Division 3.6 (commencing with Section 810) of  
25 Title 1 of the Government Code, relating to claims and actions  
26 against public entities and public employees. In selecting the  
27 special master, the court shall make every reasonable effort to  
28 ensure that the person selected has no relationship with any of the  
29 parties involved in the pending matter. ~~Any information~~  
30 *Information* obtained by the special master shall be confidential  
31 and may not be divulged except in direct response to inquiry by  
32 the court.

33 (2) In any case in which the magistrate determines that, after  
34 reasonable efforts have been made to obtain a special master, a  
35 special master is not available and would not be available within  
36 a reasonable period of time, the magistrate may direct the party  
37 seeking the order to conduct the search in the manner described  
38 in this section in lieu of the special master.

39 (e) Any search conducted pursuant to this section by a special  
40 master may be conducted in a manner that permits the party serving

1 the warrant or his or her designee to accompany the special master  
2 as he or she conducts his or her search. However, that party or his  
3 or her designee may not participate in the search nor shall he or  
4 she examine any of the items being searched by the special master  
5 except upon agreement of the party upon whom the warrant has  
6 been served.

7 (f) As used in this section, “documentary evidence” includes,  
8 but is not limited to, writings, documents, blueprints, drawings,  
9 photographs, computer printouts, microfilms, X-rays, files,  
10 diagrams, ledgers, books, tapes, audio and video recordings, films,  
11 and papers of any type or description.

12 (g) No warrant shall issue for any item or items described in  
13 Section 1070 of the Evidence Code.

14 (h) Notwithstanding any other law, no claim of attorney work  
15 product as described in Chapter 4 (commencing with Section  
16 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall  
17 be sustained where there is probable cause to believe that the  
18 lawyer is engaging or has engaged in criminal activity related to  
19 the documentary evidence for which a warrant is requested unless  
20 it is established at the hearing with respect to the documentary  
21 evidence seized under the warrant that the services of the lawyer  
22 were not sought or obtained to enable or aid anyone to commit or  
23 plan to commit a crime or a fraud.

24 (i) Nothing in this section is intended to limit an attorney’s  
25 ability to request an ~~in-camera~~ *in-camera* hearing pursuant to the  
26 holding of the Supreme Court of California in *People v. Superior*  
27 *Court (Laff)* (2001) 25 Cal.4th 703.

28 (j) In addition to any other circumstance permitting a magistrate  
29 to issue a warrant for a person or property in another county, when  
30 the property or things to be seized consist of any item or constitute  
31 ~~any~~ evidence that tends to show a violation of Section 530.5, the  
32 magistrate may issue a warrant to search a person or property  
33 located in another county if the person whose identifying  
34 information was taken or used resides in the same county as the  
35 issuing court.

36 (k) This section shall not be construed to create a cause of action  
37 against any foreign or California corporation, its officers,  
38 employees, agents, or other specified persons for providing location  
39 information.

1     *SEC. 2. Section 1.5 of this bill incorporates amendments to*  
2     *Section 1524 of the Penal Code proposed by both this bill and*  
3     *Assembly Bill 539. It shall only become operative if (1) both bills*  
4     *are enacted and become effective on or before January 1, 2016,*  
5     *(2) each bill amends Section 1524 of the Penal Code, and (3) this*  
6     *bill is enacted after Assembly Bill 539, in which case Section 1 of*  
7     *this bill shall not become operative.*

O